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SIPDIS

E.O. 12958: N/A
TAGS: EFIN EPET PGOV PINS NI
SUBJECT: Revenue Sharing and Resource Control

¶1. (U) In the interests of de-mystifying what is for everyone, Nigerians included, an extremely convoluted federal revenue-sharing system, Embassy offers the following summary explanation to help define the issues at stake in the resource control lawsuit being heard in the Nigerian Supreme Court. Familiarity with the broad outlines of the GON's revenue distribution scheme is also essential for understanding many of the Federal/State issues that will arise from the work of the Constitutional Review Committee. Some of the most contentious constitutional issues considered by the Committee involve revenue distribution and resource control.

¶2. (U) We will present the distribution process in a linear, outline form and define terms as needed. Naira values are based on this year's (FY 2001) income projections provided by the Ministry of Finance to the National Assembly. Dollar values are based on an exchange rate of 130 naira/dollar. (Dollar and naira figures in billions, except where noted. Numbers rounded.)

¶I. FEDERALLY COLLECTIBLE REVENUES: N2,126 b.
(16.35 b.
USD)
These are gross revenues to the GON which are divided into Oil and Non-oil Revenues.

¶A. OIL REVENUE

¶1. Oil and Gas Revenues (Total): N1,672 b.
(12.8 b.
USD)
Comprised of:
Export Crude: N863 b.
Petroleum Profit tax: N353 b.
Oil Royalties N163 b.
Domestic Crude N241 b.
Upstream Oil/Gas N 30 b.
Rents, oil block sales N 22 b.

¶2. Less Primary First Line Charges: N497 b.

(3.82 b.USD)
NNPC Joint Venture Cash Calls:N350 b.
Petroleum Product Subsidy: N147 b.

Note: This total is deducted from gross petroleum receipts only (line 1). Primary First Line Charges include capital contributions to the Nigerian National Petroleum Corporation's (NNPC) Joint Venture Companies (JVC's) and the national petroleum product subsidy. Since the GON owns an average of 57 percent of the JVC's, it contributes that same percentage to the total of capital investment in the petroleum sector.

¶3. Net Oil Revenues: N1175 n.
(After primary first line charges) (9.03 b. USD)

¶4. DERIVATION: (13% of Net Oil Revenue) N153 b.

(1.18 b. USD)

Note: Derivation is to be paid to the nine oil

producing states, and equals 13 percent of net oil revenues after primary first line charges. This payment is intended to compensate states for environmental degradation due to resource extraction. Whether to base this 13 percent figure on total oil production, or onshore production only, is the crux of the current dispute between the States and Federal Government. Whatever the outcome, it is at this point in the process that derivation is determined. Offshore production constitutes roughly 45 percent of total production, with that portion expected to increase gradually over the next several years as new offshore fields come on line and existing onshore fields are depleted.

¶5. Net GON Oil Revenues after Derivation: N1022 b.

(7.86 b. USD)

¶6. Less Secondary First Line Charges: N368 b.

(2.83 b. USD)

Secondary First Line Charges include:
External Debt Service: N150 b.
NNPC Priority Projects: N34 b.
Other Charges: N184 b.

¶7. Net GON Oil and Gas Revenue N838 b.

(6.44 b. USD)

¶B. NON-OIL REVENUE

¶1. Non-oil Revenue (Total): N453 b.

(3.48 b. USD)

VAT N70 b.
Customs Duties N114 b.
Company Income Tax N70 b.
Education Tax N7 b.
Petroleum Products Tax N40 b.
Independent Revenue N60 b.
(Parastatal Profits)
Customs Levies N20 b.
Privatization Proceeds N70 b.
Fertilizer Debt Recovery N2.5 b.

¶C. FEDERALLY COLLECTIBLE REVENUE

Net oil and non-oil revenue: N1292 b.

(9.93 b. USD)
National Judicial Council: N15??

Note: NJC funding is deducted as a first charge against federally collectible revenue--net oil plus non-oil income--which then determines the level of funding for the Federation Account. The NJC is responsible for administration of the State and Federal Courts.

II. FEDERATION ACCOUNT N1277 b.
(Federally Collectible Revenue less NJC funds)(9.82 b. USD)

Note: Some non-oil income items are considered exclusive Federal Government revenue, and are deducted from the Federation Account before arriving at the figure for Federally Distributable Funds, which are allocated to the three tiers of government. Exclusive Federal Government revenue includes all non-oil revenues listed above except company income tax, customs duties, and the petroleum products tax.

¶A. Federally Distributable Funds: N1047 b.
(less exclusive Federal Govt. revenue) (8.05 b. USD)

¶1. Federal Govt. Share (48.5%): N508
(3.9 b.
USD)

¶2. States (24%): N251
(1.93 b.
USD)

¶3. Local Govt. Areas (20%): N210
(1.6 b.
USD)

¶4. Special Funds (7.5%): N78 b.
(.6 b. USD)

Special Funds are then apportioned between the three levels of government according to the same percentages.

¶B. Vat Distribution (N70 b.)

¶1. Federal Govt. share of Vat (15%): N10.5 b.
¶2. States Share of Vat (50%): N35 b.
¶3. Local Government Areas (35%): N24.5 b.

¶C. Niger Delta Development Commission: N17.8 b.

Note: This amount is paid by the GON to the NDDC. The figure is determined by multiplying 38.61 as a percentage against the overall revenue figure for the states (IIA2: N251 b.). This provides N97 b. which is multiplied by .15 to get the basic allocation for the NDDC: N14.5 b. (Note: The GON has only been paying the NDDC at a rate of 10% rather than the 15% required by the NDDC law. End note.) An additional 3.3 billion naira is added to this figure from a separate revenue item, leaving a total payment to the NDDC of N17.8 b. This amount is paid to the NDDC by the GON out of the Federation Account, and essentially is a taken as a charge against the Federation Account after applying the revenue sharing formula.

III. Total Federal/State/LGA Disposable Revenue:

N1370 b.

(10.5 b. USD)

¶1. Federal Government: N708 b.
(5.44 b.
USD)
(48% of Federation Acct., 10% Vat, Special Funds distribution + retained revenue)

¶2. States: N380 b.
(2.92 b.
USD)
(24% of Fed. Acct., VAT and special funds distribution)

¶3. Local Government Areas: N282 b.
(2.17 b.
USD)
(20% of Fed. Acct., Vat and Special Funds distribution)

Resource Control Lawsuit

¶3. (U) The foregoing revenue distribution summary is helpful in understanding what is at stake in the current lawsuit between the oil-producing states and the Federal Government. As mentioned above, derivation is a 13% deduction from net oil revenues after all first charges are

removed, and is intended to compensate oil-producing states for environmental degradation. It is also intended as a type of royalty payment to oil-producing states to partially compensate them for the expropriation of mineral rights by the Federal Government under the Land Use Decree Act of 1973, during the military administration of General Yakubu Gowon.

¶4. (U) The Federal Government contends that offshore production should be excluded in determining derivation for the following reasons: first, the GON argues that offshore production beyond the three-mile territorial limit is in the exclusive economic zone of the GON, and states with maritime boundaries therefore have no claim to special ownership or administration of those resources. Second, it contends that offshore production is not deleterious to the littoral environment--one of the primary justifications for the derivation payment. Finally, the GON argues that mineral rights beyond the three-mile territorial limit never belonged to the states, so both the legal and moral arguments in favor of compensation based on these resources are invalid. The states disagree, arguing that the offshore/onshore dichotomy was introduced by Head of State General Gowon by military decree in order to help pay the lingering costs of the Civil War and is unconstitutional.

¶5. (U) The oil-producing states may have the upper hand on the purely constitutional issues. Section 162(2) of the 1999 Constitution provides that the National Assembly shall determine a formula for revenue allocation that takes into account among other things, population, revenue generation, landmass:
"Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than 13 percent of the revenue accruing to the Federation Account directly from any natural resources."

The states are arguing that the introduction of a distinction between onshore and offshore production is not based in the plain language of the Constitution, which would seem to forbid it.

6.(U) Comment: While it is unclear how the Court will rule, the States may well prevail if the Supreme Court makes a purely legal judgment based on the language in the Constitution. In view of the passage, "accruing to the Federation Account directly from any natural resources," the real issue may boil down to whether certain Nigerian states--by virtue of having maritime boundaries--have a higher order claim to the 13 percent derivation from offshore oil than do all states collectively.

¶7. (U) President Obasanjo unilaterally refused to pay derivation from May 1999, and only began making partial payments to the oil-producing states under political pressure in June 2000. It is encouraging that the Obasanjo Administration is seeking a legal outcome from the Supreme Court, rather than continuing to take unilateral action. However, the issue is a political one, and many observers expect the Court to seek a way to thrust the question back into the political arena. A more detailed report on the issues and background to the resource control lawsuit will be provided in Septel. End Comment.
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